

DATA SHARING REVIEW CONSULTATION RESPONSE

<http://www.justice.gov.uk/publications/data-sharing-review-consultation.htm>

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Questionnaire

This document assumes a working knowledge of the Data Protection Act and other relevant legislation.

Section 1: Background

Question 1

Please explain what your interest in information sharing is.

If you have an active involvement in personal information sharing, we would be grateful for the following information:

- What kinds of personal information do you collect, hold and share?
- How do you collect, hold and share such personal information?
- For what purposes do you collect, hold and share such personal information?

My organisation collects and processes data about our members in order to provide members with information and support and the organisation has undertaken DP training in order to facilitate this. Members of Education Otherwise also frequently express concerns a/ about the amount of data sharing on children and families at local and national government level and b/ the difficulty of obtaining information about their own families from local authority education services. Therefore EO's interest in this consultation is two-fold.

Section 2: Scope of personal information sharing, including benefits, barriers and risks of data sharing and data protection

Question 2

What in your view are the key benefits of sharing personal information to a) individuals and b) society? Please provide examples.

Question 3

What in your view are the key risks of sharing personal information to a) individuals and b) society? Please provide examples.

Question 4

As mentioned in the introduction, there are wide variations in the scope and methods of personal information sharing. What scope and what methods, in your view, pose the greatest opportunities or risks? Please explain the reasoning behind your response.

Question 5

Please provide examples of where, in your view, the public authorities hold too much data or not enough personal information, and the reasoning behind your response.

Education Otherwise has grave doubts about the amount of data held by ContactPoint combined with the electronic Common Assessment Framework. Action on Rights for Children has more information about this :

<http://archrights.wordpress.com/2008/01/20/contactpoint-and-ecaf/>

Question 6

Please provide examples of where, in your view, private sector organisations hold too much personal information or not enough personal information, and the reasoning behind your response.

Education Otherwise has specific concerns about information held by privatised education services such as Hackney Learning Trust <http://www.learningtrust.co.uk/> following the Contracting Out (Local Education Authority Functions ((England) Order 2002. Matthew Cranton of the Learning Trust has informed Education Otherwise that the Trust is not covered by the Freedom of Information Act. We have had similar difficulties trying to obtain information about home education policies and practices from the privatised service EduAction in Waltham Forest.

<http://www.eduaction.com/index.cfm?UUID=85476A17-65B8-F208-575468244971E976>

<http://tinyurl.com/2a9xoe>

Question 7

Please provide examples of cases where you believe the sharing of personal information between two or more bodies would be beneficial, but where it is not currently taking place.

Please explain as fully as possible why information is not being shared, detailing what the barriers to the sharing of personal information are – e.g. legal, cultural, financial, institutional – and how these barriers can be overcome.

Question 8

Please provide examples of cases where you believe that personal information is being shared between two or more bodies, but where this should not be taking place. Please describe the information-sharing concerned and why you believe it should not be taking place, including the risks involved in such information-sharing.

Education Otherwise is greatly concerned by the decision to place the Common Assessment Framework on an electronic system. This issue was raised by Baroness Walmsley among others in a debate in the House of Lords last October.

<http://www.theyworkforyou.com/lords/?id=2007-10-24b.1117.7>

“ It is extraordinary that throughout the whole debate on the regulations for ContactPoint, the Government did not once mention their intention to create a second, parallel, national electronic database containing sensitive assessments of children seeking services. All our concerns about the security of ContactPoint are amplified in relation to eCAF. It is simply not possible to keep such a large database secure. It will have thousands of users, quite conceivably as many as ContactPoint. While arguments about the potential insecurity of ContactPoint have been countered with assertions from the Government that it will contain only minimal information, the same cannot be said about eCAF. It will contain detailed personal information about children seeking services and clear indications of their vulnerability. The Government have insisted that eCAF is a consent-based process, but my informants, Action on Rights for Children, have been contacted by several practitioners involved in the pilots, who tell them that consent to share eCAFs is not being sought and that families are being told that they will not be able to access services unless they agree to an eCAF. That is disgraceful.

These practitioners have also expressed concerns about the potential effect of eCAFs on child protection. In borderline cases, where a teacher is unsure whether to make a Section 47 referral, they have been told to complete an eCAF. I have heard from a number of practitioners that this practice is reducing the number of referrals because of the extra workload. Some practitioners are not sure whether their concerns are serious enough to go straight to child protection and, if they are unsure, they are told to fill in an eCAF. This puts them off making any report at all. It is completely inappropriate to use an eCAF where there are child protection concerns. It risks inexperienced practitioners being drawn into what may be complex and manipulative relationships, and consequently missing vital signs of problems. Besides, many of them are not properly trained to do so. How are the Government monitoring the effect that the requirement to complete an eCAF is having on the number of referrals to children's social services? [Child protection](#) work is highly specialised, and this creeping confusion of children in need with children at risk of harm is very dangerous. “

Section 3: The legal framework

The Data Protection Act (DPA) regulates the processing of information, including its obtaining, holding, use and disclosure. The second principle of the DPA is as follows: “Personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes.”

Question 9

In your view, how well does the DPA work? Please outline the DPA’s main strengths and weaknesses and any proposals for changes you would like to see made, including suggestions for their implementation.

Question 10

In your view, how well do public authorities and private organisations adhere to the second principle of the DPA? How valuable do you believe the second principle is?

We do not believe that public authorities and private organisations adhere to the second principle.

Please provide examples and the reasoning behind your response.

Question 11

What technical, institutional or societal barriers stand in the way of the effectiveness of the DPA? Please provide examples.

Question 12

What further powers, safeguards, sanctions or provisions do you believe should be included in the DPA.

Review of sanctions is necessary. The penalties for breaches of DP are minimal.

http://www.ico.gov.uk/upload/documents/annual_report_2007_html/11_prosecutions.html

Individuals can sue under the Data Protection Act but they must prove damage and the data processor appears to be able to offer the defence that they tried to comply with the rules.

Question 13

Are there any other aspects of UK or EU law (such as EU Directive 95/46/EC) that impact positively or negatively on data sharing or data protection? Please provide examples.

Question 14

Are there any statutory powers unavailable that would enable better and more secure sharing of personal information– for example for identity authentication purposes – between a) public authorities and b) public authorities and private organisations? If so, what are they? Please provide examples and any steps you believe could be taken to improve matters.

We don't believe that secure sharing can ever be guaranteed because of the possibility of human error.

Question 15

Are there any parts of the legal framework that place an unreasonable burden on business? Please provide examples. Please outline your proposals for streamlining the legislation to ensure that such burdens are minimised.

Section 4: Consent and transparency

Question 16

Is it clear whether and when you need individuals' consent to share information about them? Are you clear about the form that consent should take? Please provide examples.

My organisation, Education Otherwise, has undertaken Data Protection training to explore these issues.

Please provide details of any initiative you have been involved in that has been based on consent.

Question 17

What, if any, barriers would a requirement for gaining consent create to the sharing of personal information? Please explain your reasoning.

Question 18

Do you have any suggestions on how to make the sharing of information more transparent? For example, should individuals be given strengthened access rights? And if so, how? Should organisations be expected to do more to explain their use and sharing of personal information to the public? And if so, how?

We believe individuals should be given strengthened access rights. There should also be meta data so that incorrect information can be amended. We are aware that this is one of the recommendations of the Framework Code of Practice.

Question 19

How can we best ensure that information sharing policy is developed in a way that ensures proper transparency, scrutiny and accountability?

For example: In your view, how valuable is the Information Commissioner's recently published Framework code of practice for sharing personal information

(http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/pinfo-framework.pdf <http://tinyurl.com/33ufa4> ?)

Does the Framework Code have teeth ? We note that on page 6 it says that “no action can be taken over a failure to adopt good practice or to act on the recommendations of the framework code.”

Question 19

In your view, how valuable are privacy impact assessments along the lines announced by the Information Commissioner on 11 December (www.ico.gov.uk)?

http://www.ico.gov.uk/about_us/news_and_views/current_topics/Surveillance_society_conference.aspx

<http://tinyurl.com/35oamp>

The Privacy Impact Assessment sounds like good idea but we are not clear whether ICO will do PIA for ongoing data collection system eg ContacPoint because the link says that "PIAs are a process of ensuring that privacy concerns are identified at the early stage of an initiative so that these can be addressed and safeguards built in rather than bolted on as an expensive afterthought. "

Education Otherwise agrees that there should be PIA to go with regulatory impact assessment, disability impact assessment, race impact assessment and gender equality impact assessment. but we are profoundly sceptical about how seriously people take the impact assessments. We set out some of these concerns in our response to the Better Regulation Executive consultation on consultation practice in September 2007

<http://www.freedomforchildrentogrow.org/cabinetofficeconsultation.pdf>

Annette Taberner from Education Otherwise Government Policy Group attended the September 2007 BRE/cabinet office seminar in Leeds looking into improving Government consultation practice.

The following is from the official notes of the meeting which were sent to the Policy Group by the Cabinet Office :

‘FLAWED IMPACT ASSESSMENTS: 1/ ADDED AT LAST MINUTE ; 2/ STAKEHOLDERS NOT ENGAGED WITH IMPACT ASSESSMENTS PRIOR TO CONSULTATION; 3/ IMPACT ASSESSMENT BIAS FAVOURING GOVERNMENT OPTION

Impact Assessment work seems often to be a last-minute add-on to consultation documents rather than integral parts of the consultation. There are therefore sometimes no procedures in place to engage stakeholders in the impact assessment work. Is there any evidence of impact assessments actually affecting policy decisions? “

Section 5: Technology

Question 20

What impact in your view have technological advances had on the sharing and protection of personal information? Please provide examples.

We think that memory sticks, internet mobile phones, laptops, wi-fi and the widespread use of PCs to work from home all compromise data security.

http://www.mailonsunday.co.uk/pages/live/articles/news/news.html?in_article_id=504530&in_page_id=1770

<http://tinyurl.com/yvo2na>

Personal details of around two million children are at risk because of lax security by primary school staff, a study suggests.

The sensitive information is being copied on to computer discs and other devices and taken home by school managers on a daily basis.

Hundreds of schools also leave data at unsecured locations on school premises where it could be stolen.

The data includes pupils' names, addresses and birth dates, contact numbers for parents, and details of attendance, behaviour and academic records. Personal medical information is often also stored.

There are fears that regularly carrying the data home puts it at unnecessary risk of theft.

But without clear Government guidance, schools are left to make their own decisions on security.

The research follows the recent loss of child benefit computer discs containing personal details of all UK families with a child under 16 and the loss of a disc holding the details of three million learner drivers.

Of the 17,300 primary schools in England, 933 took part in the nationwide survey. It found that 49 per cent back up personal data on to CDs, memory sticks and tape and "expose them to theft" by taking them out of school every night.

Around 30 per cent store the data in a 'safe' and 14 per cent in a 'secure drawer'. Four per cent admitted leaving it unsecured at locations around the school. Only 1 per cent of school managers said they took the added precaution of encrypting the data.

The survey was carried out by RM School Management Solutions, part of Britain's biggest provider of education computer technology.

General manager Paul Grubb said: 'Schools may be acting with the best intentions to preserve children's records and ensure information is kept up to date, but they risk breaching data protection guidelines by taking such risks with pupil data.'

"Unfortunately the Data Protection Act isn't clear enough on this issue and so schools are interpreting it and making their own decisions."

<http://tinyurl.com/2vc3kf>

<http://www.computerweekly.com/Articles/2008/01/18/228990/stockport-primary-care-trust-loses-4000-patient-records-on-memory.htm>

The personal medical records of 4,000 NHS patients have been lost by Stockport Primary Care Trust, but health managers have chosen not to inform the individuals involved.

The records were on a USB stick clipped round the neck of an NHS employee when they were lost. They contained the names, dates of birth and details of medical conditions of patients of Stockport Primary Care Trust, as well as their NHS and trust numbers and details of their GPs.

The trust has since informed the Department of Health and GPs about the loss, but news only came to light publicly following a freedom of information request.

Stockport PCT chief executive Richard Popplewell said steps were taken to search for the device by retracing the path of the staff member. But it has not been found."

"The Stockport USB stick loss follows a similar loss at a Nottingham hospital last year. That loss only came to light when a doctor revealed the incident in the British Medical Journal."

Question 21

Should the law mandate specific technical safeguards for protecting personal information? For example, should there be an explicit requirement that all personal information held on portable devices be encrypted to a particular standard?

Information can be decrypted. Non-specialist users do not understand about encryption. An example is given here :

http://www.dmhstallard.com/site/services/ipit/IDTheft_Publicsector_spring_update.html

A spokesperson for the council attempted to allay fears and said the authority was “not completely sure of the level of encryption” on the stolen laptop, “but our understanding is there was security on the machine”.

Any encryption proviso does not take account of the fact that many local authorities outsource IT in an effort to meet national Government deadlines and that the staff who are subsequently using the system do not have any background in IT. Once again we are faced with the intractable problem of human error and ignorance.

Question 22

How, in your view, could ‘privacy enhancing techniques’, such as the anonymisation or pseudonymisation of personal information, help safeguard personal privacy, whilst facilitating activities such as performing medical research? Is sufficient advice about the deployment of such techniques available? Are you confident about using them? What are the barriers to using them?

Section 6: International comparisons

Question 23

Are you aware of any jurisdictions whose legal framework for sharing and protecting personal information contains features that could be useful in a UK context? Please provide examples.

Question 24

Do you have any international examples of good practice in the sharing of personal information that could or should be adopted by the UK?

Question 25

Do you have any knowledge of jurisdictions that have adopted a particularly permissive or restrictive approach to sharing personal information? What have the consequences of this been?

Question 26

Are you aware of significant differences in public attitudes to the sharing of personal information in other countries? Please provide examples and an explanation for why you believe this to be the case.

Section 7: Additional questions

Question 27

Are there any additional issues on the sharing of personal information and protection of personal information that this review should be considering? Do any of these issues apply specifically to your sector?

We believe that there is no substitute for frontline staff. In terms of safeguarding children, information sharing in and of itself does not “safeguard and promote the welfare of children.”

Several letters from Education Otherwise have been published in the Guardian on this :

Letters to the Guardian, Tuesday 2nd January 2007

<http://education.guardian.co.uk/egweekly/story/0,,1981253,00.html>

Index is unworkable

“I was interested to read that Shane Roberts' mother welcomes the Information Sharing Index (Is sharing caring? December 12). I can see that in a small-scale pilot project there may be short-term gains. However, as a parent I would not welcome the ISI in any shape or form.

I live in Sheffield, which has also been a pilot project area. Many reservations have been expressed on the ground in Sheffield and elsewhere with regard to handing over children's personal details to half a million registered users. Many parents have no confidence that this data will be objective.

In addition, the financial and logistical implications for 150 local authorities will be immense and this will have a direct impact on services. The database cannot possibly be secured against misuse and hacking. This is why the details of celebrities' children may be kept off the records; the remaining 11 million children are deemed safe. I am exceedingly sceptical of Beverley Hughes's positive spin on the database. I and many parents consider it unworkable and unsafe.

Fiona Nicholson,
Sheffield “

<http://www.guardian.co.uk/society/2007/mar/02/childrenservices.guardianletters1>

Letters to the Guardian, Friday 2nd March, 2007

Liz Davies is correct to see the children's database as a surveillance tool. Catherine Ashton said in the Lords on May 24 2004: "I would not say that he [Lord Laming] was the author of the proposal for databases but that has been part of our discussions with him in trying to implement effectively what should be done." The agenda had been decided in advance of Laming's report.

In December, Education Otherwise, the home education support charity, submitted a response to the DfES on the information sharing index. Parents are being told the database is necessary to protect children, yet IT professionals say the database cannot be made safe from abuse. Frontline staff working to protect vulnerable children have also expressed disbelief that investing hundreds of millions in IT can be the best way to safeguard children. The government's own information commissioner has issued a detailed report advising extreme caution in proceeding with the database. The child protection register is being abolished and money diverted into unwieldy computer systems. Local authorities are advising government that they will be unable to meet many of the deadlines. The conceptual framework for the information sharing index did not take account of the divergent IT systems in our local authorities. The thought that half a million practitioners in health, education, social services, youth work and IT might have access to detailed information about the nation's children is a cause of grave concern to thousands of home-educating parents.

Fiona Nicholson
Education Otherwise, Sheffield “

Question 28

Please set out any additional suggestions or observations you have that you believe will be of assistance to the review